

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

UNITED STATES OF AMERICA;  
OFFICE OF THE GOVERNOR OF  
THE STATE OF SOUTH  
CAROLINA; SOUTH CAROLINA  
DEPARTMENT OF HEALTH AND  
ENVIRONMENTAL CONTROL,  
AND SOUTH CAROLINA  
DEPARTMENT OF NATURAL  
RESOURCES, AS AGENCIES OF  
THE STATE OF SOUTH  
CAROLINA AND AS TRUSTEES  
FOR NATURAL RESOURCES,

Plaintiffs,

v.

MACALLOY CORPORATION and  
THE BOC GROUP, INC.,

Defendants.

CIVIL ACTION NO. \_\_\_\_\_

COMPLAINT

**COMPLAINT FOR NATURAL RESOURCE DAMAGES**

The United States of America, by the authority of the Attorney General of the United States, acting at the request of National Oceanic and Atmospheric Administration ("NOAA") and the Department of the Interior ("DOI"), and the State Trustees, who are the Office of the Governor of the State of South Carolina, the South Carolina Department of Health and Environmental Control ("SCDHEC") and the South Carolina Department of Natural Resources ("SCDNR"), through the undersigned attorneys, file this complaint and allege as follows:

**NATURE OF ACTION**

1. This is a civil action, brought against Macalloy Corporation, ("Macalloy") and the BOC Group, Inc. ("BOC") (collectively, "Defendants"), for recovery of damages for injury to,

loss of, or destruction of natural resources, under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, and the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-200 (2002). Plaintiffs seek damages in order to compensate for and restore natural resources injured by the release or threatened release of hazardous substances into the environment at the Macalloy Superfund Site ("Site") in North Charleston, South Carolina. Plaintiffs also seek to recover unreimbursed costs of assessing such damages.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 (Federal question), 1345 (United States as plaintiff), and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b) (Jurisdiction; venue). This Court has jurisdiction over the subject matter of the State Trustee's claims under 28 U.S.C. § 1367(a) (Supplemental jurisdiction) because the State Trustee's claims are so related to the United States' claims that they form part of the same case or controversy.

3. Venue is proper in the District of South Carolina, pursuant to 28 U.S.C. §§ 121 (South Carolina) and 1391(b) (Venue generally), and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b) (Jurisdiction; venue), because it is the judicial district in which the releases occurred.

### **DEFENDANTS**

4. Macalloy is a "person" within the meaning of Section 101 of CERCLA, 42 U.S.C. § 9601(21), because Macalloy is a corporation.

5. BOC is a "person" within the meaning of Section 101 of CERCLA, 42 U.S.C. § 9601(21), because BOC is a corporation. BOC is the successor corporation to Airco, Inc.

## FACTUAL ALLEGATIONS

6. The Macalloy Site is located at 1800 Pittsburgh Avenue, Charleston County, South Carolina, adjacent to a body of water known as Shipyard Creek.
7. The Macalloy facility is a "facility" within the meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
8. There have been "releases" and "threatened releases," within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22), 9607(a), at and from the Macalloy facility, including, inter alia, discharges of contaminated stormwater, discharges of pollutants from outfalls, and placement of dust and slag on the soil.
9. "Hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4, including chromium, nickel, zinc, manganese, arsenic, and lead, have been released at and from the Macalloy facility.
10. "Natural Resources" within the meaning of Section 101(16) of CERCLA, 42 U.S.C. § 9601(16), have been and/or are being injured, lost, or destroyed as a result of the releases of hazardous substances from the Site.
11. Macalloy owned and operated a ferrochromium manufacturing facility at the Site from 1978 to approximately July 11, 1998. On approximately July 11, 1998, Macalloy ceased operating its manufacturing facility. Macalloy continued to own the Site until approximately February 24, 2005.
12. Defendant Macalloy is the "owner and operator" of the Macalloy facility, within the meaning of section 101(20) of CERCLA, 42 U.S.C. § 9601(20).
13. Airco Inc. owned and operated a ferrochromium manufacturing facility at the Site

from approximately 1964 to 1978.

14. Defendant BOC, as the successor corporation to Airco, is a "person who at the time of disposal of hazardous substances owned or operated" the Macalloy facility, within the meaning of Sections 101(20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a)(2).

15. Plaintiffs have incurred costs in assessing damages to natural resources resulting from the releases.

### **FIRST CLAIM FOR RELIEF**

16. Paragraphs 1 through 15 are realleged and incorporated herein by reference.

17. Defendant Macalloy is liable as the "owner and operator" of the Macalloy facility under 42 U.S.C. § 9607(a)(1) and as a "person who at the time of disposal of hazardous substances owned or operated" the Macalloy facility, under 42 U.S.C. § 9607(a)(2).

18. Defendant BOC is liable as successor to a "person who at the time of disposal of hazardous substances owned or operated" the Macalloy facility, under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

19. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Macalloy and BOC are jointly and severally liable to the United States and to the State Trustees for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from a release of hazardous substances from the Macalloy Site.

### **SECOND CLAIM FOR RELIEF**

20. Paragraphs 1 through 15 are realleged and incorporated herein by reference.

21. Defendant Macalloy is liable as the "owner and operator" of the Macalloy facility

under 42 U.S.C. § 9607(a)(1) and as a “person who at the time of disposal of hazardous substances owned or operated” the Macalloy facility, under 42 U.S.C. § 9607(a)(2).

22. Defendant BOC is liable as successor to a “person who at the time of disposal of hazardous substances owned or operated” the Macalloy facility, within the meaning of Sections 101(20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a)(2).

23. Activities at the Site have resulted in unauthorized contamination of waters of the State, including groundwater and other resources, and damages and assessment costs are recoverable on behalf of the State Trustees pursuant to 42 U.S.C. § 9607 and the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-200.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Award Plaintiffs a judgment against the Defendants for all damages and assessment costs; and
2. Grant the Plaintiffs such other relief as this Court may deem appropriate.

Respectfully submitted,

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